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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/844,968	04/27/2001	Joseph P. Scannell	USB-001.02	1661

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FOLEY HOAG, LLP
PATENT GROUP, WORLD TRADE CENTER WEST
155 SEAPORT BLVD
BOSTON, MA 02110

EXAMINER

LE, TOAN M

ART UNIT	PAPER NUMBER
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2863

DATE MAILED: 04/14/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

Advisory Action

Application No.

09/844,968

Applicant(s)

SCANNELL, JOSEPH P.

Examiner

Toan M Le

Art Unit

2863

--Th MAILING DATE of this communication appears on the cover sheet with the corresponding address --

THE REPLY FILED 24 March 2003 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE. Therefore, further action by the applicant is required to avoid abandonment of this application. A proper reply to a final rejection under 37 CFR 1.113 may only be either: (1) a timely filed amendment which places the application in condition for allowance; (2) a timely filed Notice of Appeal (with appeal fee); or (3) a timely filed Request for Continued Examination (RCE) in compliance with 37 CFR 1.114.

PERIOD FOR REPLY [check either a) or b)]

- a) ☒ The period for reply expires 3 months from the mailing date of the final rejection.
- b) ☐ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection. ONLY CHECK THIS BOX WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

1. ☐ A Notice of Appeal was filed on _____. Appellant's Brief must be filed within the period set forth in 37 CFR 1.192(a), or any extension thereof (37 CFR 1.191(d)), to avoid dismissal of the appeal.
2. ☐ The proposed amendment(s) will not be entered because:
- (a) ☐ they raise new issues that would require further consideration and/or search (see NOTE below);
 - (b) ☐ they raise the issue of new matter (see Note below);
 - (c) ☐ they are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
 - (d) ☐ they present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: _____.

3. ☐ Applicant's reply has overcome the following rejection(s): _____.
4. ☐ Newly proposed or amended claim(s) _____ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).
5. ☒ The a) ☐ affidavit, b) ☐ exhibit, or c) ☒ request for reconsideration has been considered but does NOT place the application in condition for allowance because: See Continuation Sheet.
6. ☐ The affidavit or exhibit will NOT be considered because it is not directed SOLELY to issues which were newly raised by the Examiner in the final rejection.
7. ☐ For purposes of Appeal, the proposed amendment(s) a) ☐ will not be entered or b) ☐ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.

The status of the claim(s) is (or will be) as follows:

Claim(s) allowed: _____.

Claim(s) objected to: _____.

Claim(s) rejected: 1-39.

Claim(s) withdrawn from consideration: _____.

8. ☐ The proposed drawing correction filed on _____ is a) ☐ approved or b) ☐ disapproved by the Examiner.
9. ☒ Note the attached Information Disclosure Statement(s) (PTO-1449) Paper No(s). 7.
10. ☐ Other: _____

Continuation of 5: Hydrology is defined as the scientific study of the properties, distribution, and effects of water on the earth's surface, in the soil and underlying rocks, and in the atmosphere. Hydraulic is defined as: (a) of, involving, moved by, or operated by a fluid, especially water, under pressure; (b) able to set and harden under water, as Portland cement; (c) of or relating to hydraulics by The American Heritage Dictionary of the English Language, Third Edition copyright 1992 by Houghton Mifflin Company.

As such the argument is not persuasive because: Court Explains Use of Dictionaries in Interpreting Patent Claims- Texas Digital Systems, Inc. v. Telegenix, Inc. 02-1032- On Oct. 16 in an opinion by Judge Linn, the Federal Circuit overturned an award to Texas Digital of more than \$15 million for infringement of patents for controlling color in a light emitting diode display. The opinion addressed several claim interpretation issues. The court reviewed the law of claim interpretation at some length, and explained that dictionaries, encyclopedias and treatises are resources available to assist the court in determining the ordinary and customary meaning of claim terms. The court does NOT consider dictionaries, encyclopedias and treatises to be "extrinsic evidence" or even "a special form of extrinsic evidence."

In addition, the claims are too broad because they are not supported by the original description or by an enabling disclosure, a rejection under 35 U.S.C. 112, first paragraph would be appropriate MPEP 2173.04

Furthermore, hydrological structures such as bridges, dams, levees,...were studied on movements or scours outside the structures while hydraulic structures were dealt inside the structures. Therefore, hydrological structures and hydraulic structures are distinct from each others.


John Barlow
Supervisory Patent Examiner
Technology Center 2800